

JUVENILE SEX OFFENDERS: From Investigation to Disposition

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PRACTICAL TIPS FOR PROSECUTING SEX OFFENDERS IN JUVENILE COURT

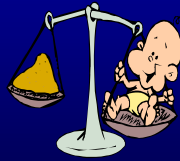
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Practical Tips for Prosecuting Juvenile Sex Offenders



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I received a DR,
now what??



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Deciding *whether* to file

- Things to consider:
 - Corroboration
 - Age of juvenile
 - Age of victim
 - Victim willingness to prosecute

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Deciding *what* to file

SCWM vs Sexual Assault vs CM

A.R.S. §13-1405 Sexual conduct with a minor (SCWM)

- A. A person commits sexual conduct with a minor by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person who is under eighteen years of age

If V <15 yo, it's a class 2 felony, DCAC;

If V is 15-17, it's a class 6 felony, except if perp is/was in position of trust, then it's a class 2 felony

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Deciding *what* to file

A.R.S. §13-1406 Sexual assault

- A. A person commits sexual assault by intentionally or knowingly engaging in sexual intercourse or oral sexual contact with any person without the consent of such person

This is a class 2 felony

If V <15 yo, it's a class 2 felony, DCAC

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Deciding *what* to file

A.R.S. § 13-1410 Molestation of a child (CM)

- A. A person commits molestation of a child by intentionally or knowingly engaging in or causing a person to engage in sexual contact, except sexual contact with the female breast, with a child who is under fifteen years of age.

This is a class 2 felony, DCAC

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Deciding *what* to file

"Sexting" vs Luring vs Furnishing

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor ("Sexting")

- A. It is unlawful for a juvenile to intentionally or knowingly use an electronic communication device to transmit or display a visual depiction of a minor that depicts explicit sexual material
- B. It is unlawful for a juvenile to intentionally or knowingly possess a visual depiction of a minor that depicts explicit sexual material and that was transmitted to the juvenile through the use of an electronic communication

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- C. It is not a violation of subsection B of this section if all of the following apply:
 - 1. The juvenile did not solicit the visual depiction
 - 2. The juvenile took reasonable steps to destroy or eliminate the visual depiction or report the visual depiction to the juvenile's parent, guardian, school official or law enforcement official.

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- D. A violation of subsection A is a petty offense if the juvenile transmits or displays the visual depiction to one other person. A violation of subsection A of this section is a class 3 misdemeanor if the juvenile transmits or displays the visual depiction to more than one person.
- E. A violation of subsection B of this section is a petty misdemeanor.

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Deciding *what* to file

A.R.S. § 8-309 Unlawful use of an electronic communications device by a minor (cont)

- F. Any violation of this section that occurs after adjudication for a prior violation of this section or after completion of a diversion program as a result of a referral or petition charging a violation of this section is a class 2 misdemeanor
- G. For purposes of this section:
 - 1. "Electronic communication device" has the same meaning prescribed in §13-3560.
 - 2. "Explicit sexual material" means material that depicts human genitalia or that depicts nudity, sexual activity, sexual conduct, sexual excitement or sadomasochistic abuse as defined in § 13-3501
 - 3. "Visual depiction" has the same meaning prescribed in §13-3551.

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Deciding *what* to file

A.R.S. § 13-3506 Furnishing harmful items to minors

- A. It is unlawful for any person, with knowledge of the character of the item involved, to recklessly furnish, present, provide, make available, give, lend, show, advertise or distribute to minors any item that is harmful to minors
- B. This section does not apply to the transmission or sending of items over the internet

This is a class 4 felony

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Deciding *what* to file

A.R.S. § 13-3554 Luring a Minor for Sexual Exploitation

- A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor
- B. It is not a defense to a prosecution for a violation of this section that the other person is not a minor

This is a class 3 felony; DCAC if V is <15 yo

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Deciding *what* to file

- Other things to consider:
 - Can a 13 yo commit SCWM?
 - Dates of offense(s)?
 - How many counts?
 - Use of "to-wits"
 - Adult vs juvenile court
 - A.R.S. §13-501

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A.R.S. §13-501 considerations

A. The county attorney shall bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is 15, 16 or 17 yo at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. First Degree Murder
2. Second Degree Murder
3. Forcible Sexual Assault
4. Armed Robbery
5. any other violent offense
6. any felony offense committed by a chronic felony offender
7. any offense that is properly joined to an offense listed in this subsection

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A.R.S. §13-501 considerations

B. Except as provided in subsection A of this section, the county attorney may bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is at least 14 yo at the time the alleged offense is committed and the juvenile is accused of any of the following offenses:

1. a class 1 felony
2. a class 2 felony
3. a class 3 felony in violation of any offense in chapters 10-17 or chapter 19 or 23 of this title
4. a class 3, 4, 5 or 6 felony involving a dangerous offense
5. any felony offense committed by a chronic felony offender
6. any felony properly joined to an offense listed

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A.R.S. §13-501 considerations

H. for the purposes of this section:

3. "forcible sexual assault" means sexual assault pursuant to §13-1406 that is committed without consent as defined in §13-1401, paragraph 7, subdivision (a)

A.R.S. §13-1401

(7) "Without consent" includes any of the following

(a) the victim is coerced by the immediate use or threatened use of force against a person or property

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Opening the Case

- Review all DRs
- Brady check
- On-Officer camera check
- Order discovery

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Extending an Offer

- What is reasonable/appropriate?
 - Standard offer vs deviation
 - PFDA?
- Prepare written plea agreement
 - Fines/fees
 - DNA/FPs require
 - Felony advisement
 - Restitution
 - Treatment stipulations

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Extending an Offer

- Notify victim/victim guardian
 - Who is the victim's legal representative when DCS involved?
 - Phone call or letter?
 - Use your victim advocate! (if you have one)
- Notify defense attorney prior to advisory

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Mental Competency Issues

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Competency

- "In any criminal trial every person is competent to be a witness."
A.R.S. § 13-4061
- Presumption can be rebutted.

Immunity Agreements

A.R.S. §13-4066 Privileged communications; sex offender treatment; exception

A. Any statement that is made by a person who undergoes sex offender treatment that is ordered by the court or that is provided by the state department of corrections to a person who is convicted of an offense listed in chapters 14 or 35.1 of this title and any evidence that results from that treatment is not admissible against the person in any criminal or juvenile delinquency proceeding unless the person consents, except that the statement or evidence may be used pursuant to rule 404(b) and (c), ARE

B. This section does not apply if there is a reasonable belief that the person has committed a new violation of chapter 14 or 35.1 of this title during the course of the person's treatment. A treatment provider who complies with this subsection does not violate any privilege established by law

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*I wants a trial,
now what???*



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Prepare for Trial

- Re-Run your Brady check
- Be certain you have all discovery
 - DRs
 - SANE reports
 - Recorded interviews
- Attend all defense interviews
 - If you cant make it, send someone in your place
- Send subpoenas as early as possible
- Conduct prep with ALL witnesses- even the "professionals"

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Meet with your victim!

- 1st meeting with child – friendly, fun
 - encourage questions
 - Go over rules of court
- Kids in Court
- Support Person/Items/Dog
 - People v. Tohom, 969 N.Y.S.2d 123 (2013)



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Make Process Child-Friendly

- Emphasize Safety
- Use simple words to explain
 - Oath
 - Jury
 - Lawyer
 - Judge

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Goals of Pre-Trial Prep

- Go through testimony
 - If acts are chronic, get on same page as child
- Resolve conflicts (if child able)
- Understand counter-intuitive/illogical behavior (if child able)
- YOU MUST DO THIS BEFORE TRIAL

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Pre-Trial Preparation - Ethics

- Do not make yourself a witness – have non-attorney present
- If child changes statement, you MUST disclose this to defense counsel
- If child RECANTS part/all of statement, you MUST disclose this to defense counsel
- If child ADDS to statement (e.g., remembers additional abuse), you MUST disclose this to defense counsel

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Use of Videotaped Interviews

- Use video to assess child's language
- Review with child?
- Review with/give to parents?
- Can you use it in trial?

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Motions in Limine

- Preclude irrelevant "other acts"
- Preclude sexual history of victim (or witness)

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Trial considerations

- How long will trial take?
- Who do I call to testify?
 - Do I need an expert?
- Do I do an opening?
- What is my theory of the case?
- Do I need a theme?
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Questions??

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